

Only firms which have been prequalified by the Office of Financial Management to provide bond counsel services for Fiscal Year 2022 and Fiscal Year 2023 to the Kentucky Infrastructure Authority may submit a response to this Request for Proposals.

March 18, 2021

Request for Proposals (RFP) to Serve as Bond Counsel to the Kentucky Infrastructure Authority for Fiscal Year 2022

The Office of Financial Management (“OFM”) of the Finance and Administration Cabinet of the Commonwealth of Kentucky, on behalf of the Kentucky Infrastructure Authority (“KIA” or the “Authority”), is requesting proposals from prequalified firms to provide bond counsel and related general legal services to the Authority. Pursuant to KRS 45A.850, the Authority seeks to hire **one (1) bond counsel firm** to provide the desired services for the engagement period beginning July 1, 2021 and ending June 30, 2022 (“FY 2022”), with an option to renew on the same terms and conditions for one additional fiscal year at the discretion of OFM and the Authority.

The Authority was created to provide a mechanism for funding construction of infrastructure projects by governmental agencies of the Commonwealth. Currently there are four loan programs administered by the Authority. Additionally, the Authority administers state funded Special Appropriation Grants and is authorized to receive other federal grants if awarded. These include:

Fund A - Clean Water State Revolving Fund Loan Program

This program is used to finance local wastewater treatment facilities and nonpoint source projects that qualify under the U.S. Environmental Protection Agency requirements of the Clean Water Act. Debt service for Fund A revenue bonds issued to provide the required state match is funded through state appropriations. The Authority has issued leveraged agency bonds for the Fund A program. Program revenues are used for the debt service on these bonds.

Fund B - Infrastructure Revolving Loan Program

This program provides funding for utilities and other public services projects. Debt service for bonds issued to capitalize Fund B is funded through state appropriations.

Fund C - Governmental Agencies Program

This program provides local governmental agencies funding for infrastructure projects through direct loans from cash within the program that may be reimbursed from the issuance of debt. Debt service for Fund C revenue bonds is paid from program revenues and not from state appropriations. As a result, no budgetary authorization is required.

Fund F - Drinking Water State Revolving Fund Loan Program

This program is used to finance local drinking water treatment facilities that qualify under the U.S. Environmental Protection Agency requirements of the Safe Drinking Water Act. Debt service for Fund F revenue bonds issued to provide the required state match is funded through state appropriations. The Authority has issued leveraged agency bonds for the Fund F program. Program revenues are used for the debt service on these bonds.

SPAP - Special Appropriation Grants (State Funded)

The Kentucky General Assembly has specially appropriated by budget line item grants for water and wastewater infrastructure projects identified by the Area Water Management Councils in the Water Resource Information System.

SPAP - Special Appropriation Grants (Federally Funded)

Other federal grants may periodically be awarded to KIA or to the State for the benefit of KIA.

For additional information on the Authority or its programs, please see their web site at:

<https://kia.ky.gov/>

There can be no assurance by OFM or the Authority that transactions contemplated in this RFP will be completed during the contract period.

The objectives of the Authority in the selection of a bond counsel are as follows:

1. Minimize the cost of funds and the carrying costs associated with unexpended bond proceeds within policy constraints.
2. Maximize the amount and level of legal expertise brought to each transaction.
3. Maximize permissible arbitrage earnings.
4. Minimize budgetary process complications.
5. Minimize future administrative requirements.
6. Explore Green or ESG designations for new issuances.

All bond transactions undertaken during the contract period will be under the direction of the Authority and OFM. Any offerings are subject to approval by the Authority's Board of Directors, the State Property and Buildings Commission and the Capital Projects and Bond Oversight Committee of the Legislative Research Commission of the Kentucky General Assembly.

Description of Services Sought

The firm engaged to perform bond counsel services to the Authority will be working with the Authority, OFM, the Trustee, a financial advisor (if applicable), and a senior underwriting firm in a negotiated transaction. The firm selected to perform bond counsel services will be responsible for duties which include, but are not limited to: providing legal opinions and legal advice related to program and loan documentation, debt structuring and disclosure, reviewing the Preliminary Official Statement (POS) and the Official Statement (OS) in a negotiated transaction, as well as coordinating the closing of any bond issues, coordinating the sale and closing of securities, identifying tax issues including arbitrage regulations and ongoing status of project tax exemption, consulting with the Authority, the trustee and the Commonwealth, providing information as requested to the rating agencies, attending/testifying at legislative committee meetings, assisting in presentations as needed, overseeing the printing of bond certificates, drafting and circulating required issuance documents for approval, assisting with compliance of any continuing disclosure requirements as well as preparing official transcripts in a timely manner and assisting in the review of draft legislation related to the Authority. In the event that the Authority issues bonds on a competitive basis the bond counsel firm engaged for the transaction will be required to prepare the POS and the OS as part of their duties.

General legal services will be required throughout the year in addition to those services performed during the bond issuance process. The Authority requires these services because staff does not have the expertise and no other state agency is available which possess the legal expertise to deal with questions that arise from bond issuance and loan processing. These services will include, but not be limited to items such as assistance in promulgating administrative regulations, drafting statutory language, drafting assistance agreements and other contracts, day-to-day legal assistance, working with the Public Service Commission and enforcement of existing contracts. Payment of fees for the services provided outside the bond issuance process will require execution of a Personal Services Contract. The Authority anticipates no more than an additional 200 hours of legal services beyond those services performed during the bond issuance process. In any event, the Personal Services Contract will be for an amount not to exceed \$25,000. Fees for general legal services will be set at \$125 for partner and \$100 for associate.

GENERAL INFORMATION

The Authority

The Kentucky Infrastructure Authority is a municipal bond financing agency created under Kentucky Revised Statute (KRS) 224A to provide infrastructure loans and grants to local governmental agencies and investor-owned utilities. The Authority is an agency of the Commonwealth of Kentucky. The Authority collects loan payments on a semi-annual and monthly basis from, as of the date of this publication, 227 borrowers for 580 loans. Other accounting transactions include investments, inter-fund transfers, debt service payments, operating and construction disbursements, etc. To date, the Authority has issued 54 series of bonds with 6 series outstanding.

The Authority has received and continues to apply for capitalization grants to fund the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund, administered by the U.S. Environmental Protection Agency.

The Authority has bonds outstanding under two indentures which have no debt service requirement. The Governmental Agencies Program indenture includes provisions for a pooled debt service reserve fund and surplus funds, among other accounts.

Debt Service Appropriation Process

The Commonwealth of Kentucky is constitutionally mandated to budget on a biennial cycle, with the new biennium beginning July 1 of the even numbered calendar years. The biennium consists of two (2) fiscal years with each fiscal year beginning July 1 and ending June 30 of the next calendar year. Due to the COVID-19 pandemic, the Kentucky General Assembly passed a one-year budget bill for Fiscal Year 2021 and Fiscal Year 2022.

The budget process normally begins in August prior to the start of each new biennium. Each cabinet and agency prepares a budget request for the upcoming biennium, which is submitted to the Office of the State Budget Director (“OSBD”). Each cabinet and agency only requests the amount of new debt service dollars required to support new or expansion projects to be funded via the debt issuance process. For years following that process, debt service for the new or expansion projects is included with General Fund supported debt service for all existing bonds and is requested by the Finance and Administration Cabinet’s budget request. Debt service for new projects is estimated using a debt

service template which provides rate assumptions for 7-, 10-, and 20-year bonds issued on a tax-exempt or taxable basis. The OSBD further refines the cabinet and agency budget requests into the Governor's Executive Budget Request, which is then presented to the General Assembly. General Fund debt service, which is not expended in the fiscal year for which it is appropriated, cannot be carried forward into the subsequent fiscal year and will lapse to the General Fund Surplus Account.

Required Components of Proposal

Each response to the RFP must include and address the following items. **Failure to comply with the requirements of the RFP will result in the firm's response not being evaluated by the Selection Committee.** (See Scoring, **Selection and Notification** as stated herein.)

I. Disclosure

- A. Certify that there has been no material change to any of the statements and certifications made by the firm in its response to the Request for Qualifications, Section II, Disclosure/Certification Forms, issued by OFM on January 13, 2021. In the event there has been a material change, please specify the nature of the change and the impact of the change on the firm and its ability to provide the desired services.
- B. Detail any criminal investigation, indictment, prosecution or other proceeding that has ever been brought against your firm (provide attachments if necessary). Also, describe any civil litigation pending or concluded within the last three years against your firm that would impair the firm's ability to provide the requested services (provide attachments if necessary).
- C. Disclose any potential conflicts of interest with representing the Commonwealth in this matter, including any potential conflicts of interest of employees assigned to this project and potential conflicts with any of the Authority's members, that you believe may exist or arise. The Commonwealth reserves the unqualified right to disqualify an entity or cancel any contract for any potential conflict of interest issues raised initially and/or during the life of any contract awarded.
- D. Disclose if your firm's proposal has information considered proprietary that you wish to be confidentially disclosed. In the event that your firm chooses to declare the inclusion of proprietary information, please noticeably label such information as described in the "Proprietary Information" article of the RFP.

II. Qualifications (75%)

A. Relevant Experience of the Firm (15%)

- 1. Provide a discussion of the experience, qualifications and availability of the firm's representatives who would work on bond issues of the Authority.
- 2. Provide the names and resumes of all individuals who would be assigned to work with the Authority and identify the lead counsel. Discuss the relevant bond counsel or underwriter's counsel experience of the firm's representatives in the area of infrastructure, state revolving fund and pooled financing. Additionally, provide a statement as to the availability and willingness of the firm to perform analyses and prepare opinions

concerning tax-related and/or bond resolution matters on a timely basis during the contract period which may not be directly related to the debt issuance process. Please note that any changes made to legal counsel assigned to the Authority must be approved by the Authority and OFM.

3. Discuss similar types of transactions, specifically leveraged water and wastewater revolving fund financings, on which your firm has served as bond counsel.
4. Discuss transactions, specifically water and wastewater financings, with Green or ESG Bond designations on which your firm served as bond counsel.
5. Describe your firm's technological capabilities, for example, communication abilities, software applications, ability to provide searchable transcripts on CD, and the ability to conduct electronic loan closings.

B. Relevant Experience and Qualifications of the Representatives of the Firm (35%)

1. Identify which of the firm's representatives will be responsible for the Authority's general legal services and day-to-day legal assistance and their availability. Discuss their experience in providing this type of assistance, their experience in dealing with the structure and function of utilities and their current responsibilities. Please provide four (4) references for this type of work including names, addresses and telephone numbers, specifically those related to a leverage program.
2. Provide specific references including names, addresses and telephone numbers, of similar issuers with which the firm and lead counsel have worked.

C. Legal Issues Which May Impact the Issuance of Debt by the Authority (25%)

1. Please identify and discuss any pertinent legal issues the Authority may face during the contract period which would materially impact the ability to efficiently achieve its financing objectives.

III. Fee Proposal (25%)

One (1) Fee Proposal must be submitted in a separate e-mail using Attachment C. Failure to adhere to these requirements will result in disqualification of the response.

Bond counsel fees will be paid from bond proceeds only upon the successful completion and closing of a bond issue as no funds have been appropriated for such purpose.

Provide a fee proposal on a per \$1,000 bond basis inclusive of all expenses which shall include copying, faxing, mailing (excluding overnight delivery), telephone, transcripts (loose), travel and other out-of-pocket expenses. Minimum fees per issuance are acceptable but must be specifically detailed. In preparing the fee proposal for bond issuances assume a single \$60,000,000 fixed-rate transaction during FY 2022. The amortization structure will be based upon the anticipated schedule of loan repayments.

The Authority will sell as many Bond Series as are needed from each program on the same

date in order to utilize economies of scale resulting from a larger dollar volume. All Bond Series from all Authority programs sold on the same date will be considered one issue for billing purposes.

Reservation of Rights

The Authority and OFM reserve the right to:

1. Review and approve any change in staff members significantly involved in any financing during the contract period, and discharge the firm promptly if such personnel changes do not meet the needs of the Authority.
2. Reject any and all proposals with cause.
3. Reject all proposals and seek new proposals when such procedure is reasonably in the best interest of the Authority.
4. Make investigations regarding qualifications of any or all respondents as the Selection Committee deems necessary.
5. Request and receive such additional information as the Selection Committee may reasonably require. Failure to comply with such a request will result in disqualification.
6. Waive minor irregularities in the RFP process.
7. Make all submitted proposals and any attached materials available for Open Records requests pursuant to KRS 61.872.

Liability

The Authority and OFM **shall not be** liable for:

1. Any costs incurred in the preparation and submission of any proposal.
2. Any costs incurred in connection with any interview or negotiation relating to this RFP (i.e. travel, accommodations, etc.).
3. Any disclosure, whether by negligence or otherwise, of any material or information in any form submitted in response to this RFP.

Questions

All questions concerning this RFP must be submitted by e-mail to the address below no later than **12:00 Noon, ET, on Thursday, March 25, 2021**. Any questions submitted, and answers, may be distributed to all prequalified firms at the discretion of the Selection Committee Chairperson. Please note that questions submitted after the deadline will not receive a response.

Submission of Proposals

In total, submission of proposals must be below 55 pages (one sided) of materials including attachments.

Due to the extraordinary circumstances brought about by the COVID-19 pandemic, only electronic submission materials will be accepted and must be received no later than **2:00 p.m. (EDT) on Thursday, April 8, 2021**. The Commonwealth e-mail servers filter attachments that approach 10 MB, so proposals under that limit may be submitted to Aubry.McDonald@ky.gov.

Office of Financial Management
Kentucky Infrastructure Authority
Selection Committee Chairperson
Bond Counsel FY 2022 RFP
702 Capital Avenue, Suite 76
Frankfort, Kentucky 40601-3453
Phone: (502) 564-2924
[E-mail: Aubry.McDonald@ky.gov](mailto:Aubry.McDonald@ky.gov)

Note: It is recommended that receipt of all submissions be confirmed by the submitter. Proposals received after the stated deadline will NOT be accepted.

Scoring, Selection and Notification

The Selection Committee, established pursuant to KRS 45A.843, will be composed of two employees from the Authority (voting), three employees from OFM (voting), and one merit employee from the Auditor of Public Accounts (nonvoting). Proposals will be evaluated by all voting members pursuant to the evaluation criteria outlined on **Attachment A**. The Selection Committee will determine whether to hold interviews with proposing firms. The Selection Committee will make a recommendation for selection pursuant to KRS 45A.840 to 45A.870, KRS 45A.877 to 45A.879, and KRS 45A.490 to 45A.494. The scoring of proposals is subject to reciprocal preference for a Kentucky resident bidder and preference for a Qualified Bidder. (See Attachment D for recently enacted KRS 45A.490 to 45A.494 “Kentucky Preference Laws”.)

The Kentucky Revised Statutes and the Kentucky Administrative Regulations referenced in the RFP may be found at <https://legislature.ky.gov>.

Proprietary Information

The RFP specifies the required components and general content of proposals submitted in response to the RFP. **The Finance and Administration Cabinet will not disclose any portions of the proposals prior to Contract Award to anyone outside the Finance and Administration Cabinet, representatives of the agency for whose benefit the contract is proposed, representatives of the Federal Government, if required, and the members of the evaluation committee.** After a Contract is awarded in whole or in part, the Commonwealth shall have the right to duplicate, use, or disclose all proposal data submitted by firms in response to this RFP as a matter of public record. Although the Commonwealth recognizes the firm’s possible interest in preserving selected data which may be part of a proposal, the Commonwealth must treat such information as provided by the

Kentucky Open Records Act, KRS 61.870 et sequitur, which allows for exemptions as provided in KRS 61.870(1)(c).

Pursuant to KRS 61.870(1)(c), informational areas which normally might be considered proprietary shall be limited to **individual personnel data, customer references, selected financial data, formulae, and financial audits** which, if disclosed, would permit an unfair advantage to competitors. If a proposal contains information in these areas that a firm declares proprietary in nature and not available for public disclosure, **the firm shall declare in the Disclosure (See “Required Components of the Proposal,” Section I, Subsection D) the inclusion of proprietary information and shall noticeably label as proprietary each sheet containing such information.** The Cabinet will make all reasonable efforts to maintain the confidentiality of any information provided by the firm, which is clearly identified by the firm as proprietary, provided such designation is reasonable, and subject to the order of the Attorney General or any court directing the Cabinet to release such information.

Contact with Selection Committee Members

Please note that any contact made by the firm with any member of the Selection Committee, from the date of issuance of the RFP until an award of contract, is required to be disclosed by such Committee member to the entire Committee and will become a part of the permanent file for this selection process which is subject to inspection upon public request pursuant to the Kentucky Open Records Act, KRS 61.870 – KRS 61.884.

The Authority and the Office of Financial Management respectfully solicits the submission of a proposal by your firm.

Attachment A: Evaluation Criteria

Attachment B: Evaluation Form

Attachment C: Fee Proposal Form

Attachment D: Kentucky Preference Laws (KRS 45A.490-494)

ATTACHMENT A
EVALUATION CRITERIA
KENTUCKY INFRASTRUCTURE AUTHORITY
REQUEST FOR PROPOSALS
BOND COUNSEL/GENERAL LEGAL SERVICES
FISCAL YEAR 2022

	<u>Evaluation Criteria</u>	<u>Weight</u>
1.	Relevant Experience of the Firm	15%
2.	Relevant Experience and Qualifications of the Firm's Representatives	35%
3.	Legal Issues	25%
4.	<u>Fee Proposal</u>	<u>25%</u>
	Total	100%

ATTACHMENT B
EVALUATION FORM
KENTUCKY INFRASTRUCTURE AUTHORITY
REQUEST FOR PROPOSALS
BOND COUNSEL/GENERAL LEGAL SERVICES
FISCAL YEAR 2022

FIRM: _____

REVIEWER ID: _____

Disclosure: _____ Yes _____ No

1. RELEVANT FIRM EXPERIENCE - (Qualifications, Recent Similar Transactions, Firm Organization)

Score (15 points possible): _____

Notes: _____

2. RELEVANT EXPERIENCE AND QUALIFICATIONS OF FIRM'S REPRESENTATIVES - (Number of staff available, background, individual experience on similar transactions, identification of principal contact, specific firm references)

Score (35 points possible): _____

Notes: _____

3. LEGAL ISSUES (Depth and quality of discussion of pertinent legal issues and demonstration of understanding of the Authority's bonds)

Score (25 points possible): _____

Notes: _____

Total Score*: _____

*Scores for fee proposals will be uniformly assigned by the Committee Chairperson.

Note: This form must be used when submitting your Fee Proposal. It is not to be changed. Any fees not entered as requested in the format below will result in the firm's response not being evaluated by the Selection Committee. Failure to comply with the requirements of this RFP will result in the firm's response not being evaluated by the Selection Committee.

ATTACHMENT C

FEE PROPOSAL

**KENTUCKY INFRASTRUCTURE AUTHORITY
REQUEST FOR PROPOSALS
BOND COUNSEL/GENERAL LEGAL SERVICES
FISCAL YEAR 2022**

Per Bond Fee is inclusive of all expenses including copying, faxing, telephone, travel and other out-of-pocket expenses, except as noted below**. The per bond fee quoted will be applicable to all financings completed during the contract period subject to the minimum and maximum fees stated below.

Minimum fee for any issuance: \$ 20,000
Maximum fee for any issuance: \$100,000

Bond Counsel Fee Price Per Bond \$ _____

**Note: The Authority will reimburse bond counsel for actual cost associated with necessary overnight mail expenses, advertisements (public notice requirements) and the cost of final transcripts in addition to the quoted fee with proper documentation.

The Authority anticipates no more than an additional 200 hours of legal services beyond those services performed during the bond issuance process. In any event, the Personal Services Contract will be for an amount not to exceed \$25,000. Fees for general legal services will be set at \$125 for partner and \$100 for associate.

SIGNED _____ DATE _____

NAME OF FIRM _____

ATTACHMENT D

Kentucky Preference Laws (KRS 45A.490-494)

The scoring of bids/proposals is subject to Reciprocal preference for Kentucky resident bidders and Preferences for a Qualified Bidder. *Vendors not claiming resident bidder or qualified bidder status need not submit the corresponding affidavit.

Reciprocal preference for Kentucky resident bidders

KRS 45A.490 Definitions for KRS 45A.490 to 45A.494.

As used in KRS 45A.490 to 45A.494:

- (1) "Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and
- (2) "Public agency" has the same meaning as in KRS 61.805.

KRS 45A.492 Legislative declarations.

The General Assembly declares:

- (1) A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and
- (2) Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.

KRS 45A.494 Reciprocal preference to be given by public agencies to resident bidders -- List of states -- Administrative regulations.

- (1) Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.
- (2) A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:
 - (a) Is authorized to transact business in the Commonwealth; and
 - (b) Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.
- (3) A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.
- (4) If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.
- (5) This section shall apply to all contracts funded or controlled in whole or in part by a public agency.
- (6) The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders, to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.

- (7) The preference for resident bidders shall not be given if the preference conflicts with federal law.
- (8) Any public agency soliciting or advertising for bids for contracts shall make KRS 45A.490 to 45A.494 part of the solicitation or advertisement for bids.

The reciprocal preference as described in KRS 45A.490-494 above shall be applied in accordance with 200 KAR 5:400.

Determining the residency of a bidder for purposes of applying a reciprocal preference

Any individual, partnership, association, corporation, or other business entity claiming resident bidder status shall submit along with its response the attached Required Affidavit for Bidders, Offerors, and Contractors Claiming Resident Bidder Status. The BIDDING AGENCY reserves the right to request documentation supporting a bidder's claim of resident bidder status. Failure to provide such documentation upon request shall result in disqualification of the bidder or contract termination.

A nonresident bidder shall submit, along with its response, its certificate of authority to transact business in the Commonwealth as filed with the Commonwealth of Kentucky, Secretary of State. The location of the principal office identified therein shall be deemed the state of residency for that bidder. If the bidder is not required by law to obtain said certificate, the state of residency for that bidder shall be deemed to be that which is identified in its mailing address as provided in its bid.

